

September 2004

Update: Juvenile Traffic Benchbook

CHAPTER 2

Obtaining Custody of a Juvenile Following a Criminal Traffic Offense

2.3 Notice and Custody Requirements When a Juvenile Is Charged With Illegal Transport or Possession of Alcoholic Liquor or Having Any Bodily Alcohol Content*

Effective September 1, 2004, 2004 PA 63 amended MCL 436.1703 to prohibit a minor from having any bodily alcohol content except under certain circumstances. Change the title of Section 2.3 as indicated above and beginning with the second paragraph on page 2-7, replace the content of Section 2.3 with the following:

A police officer may obtain custody of a person for a violation of MCL 436.1703 (minor purchasing, consuming, or possessing alcoholic liquor or having any bodily alcohol content). An officer who witnesses a violation of this statute may stop and detain the person, obtain satisfactory identification, seize illegally possessed alcoholic liquor, and issue an appearance ticket under MCL 764.9c.* MCL 436.1705.

If a police officer has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content, the officer may require the minor to submit to a preliminary chemical breath test (PBT). The police officer may arrest a minor based on the results of the PBT. Refusal of a minor to submit to a PBT constitutes a civil infraction. MCL 436.1703(6).

Note: A federal district court in Michigan has found that a local ordinance substantially similar to MCL 436.1703(6) violated the Fourth Amendment to the U.S. Constitution. *Spencer v Bay City*, 292 F Supp 2d 932 (ED Mich, 2003).

If the minor is less than 18 years old and unemancipated, the arresting officer must notify the minor's parent or parents, guardian, or custodian if the name of the parent, guardian, or custodian is reasonably ascertainable. This notice must be given within 48 hours after the officer determines that the person is

*See Chapter 9 for a description of the offenses treated in this section.

*Under this statute, a police officer may issue an appearance ticket and release the person following alleged misdemeanor. See also MCR 3.931(C)(1)(b), which allows the issuance of an appearance ticket to a juvenile under MCL 764.9c.

less than 18 years old and may be by any means reasonably calculated to give prompt actual notice of the offense, including notice in person, by telephone, or by first-class mail. If the minor is unemancipated, less than 17 years old, and incarcerated for a violation of MCL 436.1703(1), the minor's parents or legal guardian must be notified immediately. MCL 436.1703(7).

CHAPTER 5

Dispositional Hearings

5.6 Deferred Proceedings Under MCL 436.1703(3)

Effective September 1, 2004, 2004 PA 63 amended MCL 436.1703 to allow for deferred proceedings under certain circumstances. On page 5-6, add a new Section 5.6 and renumber succeeding sections accordingly.

MCL 436.1703(3) permits a court to defer proceedings regarding a first-time violator of MCL 436.1703(1), which prohibits a minor from purchasing, consuming, or possessing alcoholic liquor, or from having any bodily alcohol content. MCL 436.1703(3) states in part:

“(3) When an individual who has not previously been convicted of or received a juvenile adjudication for a violation of subsection (1) pleads guilty to a violation of subsection (1) or offers a plea of admission in a juvenile delinquency proceeding for a violation of subsection (1), the court, without entering a judgment of guilt in a criminal proceeding or a determination in a juvenile delinquency proceeding that the juvenile has committed the offense and with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions that include, but are not limited to, the sanctions set forth in subsection (1)(a),* payment of the costs including minimum state cost as provided for in section 18m of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.18m, and section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j, and the costs of probation as prescribed in section 3 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3.”

If the court determines that the juvenile is using this procedure in another court, or if the juvenile violates a condition of probation, the court may find that the juvenile has committed the charged violation of MCL 436.1703(1) and proceed to disposition. MCL 436.1703(3).

If the juvenile fulfills the terms and conditions of probation, the court must discharge the juvenile and dismiss the proceedings without a finding of responsibility for the offense and without entering an order of adjudication. *Id.* “There may be only 1 discharge or dismissal . . . as to an individual.” *Id.*

*For
permissible
uses of this
nonpublic
record, see
MCL
436.1703(3)(a)
–(b).

While proceedings are deferred and the juvenile is on probation, the court must maintain a nonpublic record of the case. The Secretary of State must maintain a nonpublic record* of a plea and discharge or dismissal under MCL 436.1703(3). *Id.*

CHAPTER 9

Elements of Selected Criminal Traffic Offenses

9.5 Minor Purchasing, Consuming, or Possessing Alcohol, or Having Any Bodily Alcohol Content

Effective September 1, 2004, 2004 PA 63 amended MCL 436.1703 to prohibit a minor from having any bodily alcohol content except under certain circumstances. On page 9-7, change the title of Section 9.5 as indicated above and replace the content of Section 9.5 with the following:

A. Statute

“(1) A minor shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, possess or attempt to possess alcoholic liquor, or have any bodily alcohol content, except as provided in this section. A minor who violates this subsection is guilty of a misdemeanor punishable by the following fines and sanctions and is not subject to the penalties prescribed in section 909:

“(a) For the first violation a fine of not more than \$100.00, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of substance abuse services, and may be ordered to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (4).

“(b) For a violation of this subsection following a prior conviction or juvenile adjudication for a violation of this subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or a local ordinance substantially corresponding to this subsection or section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment for not more than 30 days* but only if the minor has been found by the court to have violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, a fine of not more than \$200.00, or both, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and

*Effective September 1, 2004, 2004 PA 63 authorizes a term of imprisonment for repeat offenders under certain circumstances.

designated by the administrator of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (4).

*Effective
September 1,
2004, 2004 PA
63.

“(c) For a violation of this subsection following 2 or more prior convictions or juvenile adjudications for a violation of this subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or a local ordinance substantially corresponding to this subsection or section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment for not more than 60 days* but only if the minor has been found by the court to have violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, a fine of not more than \$500.00, or both, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (4).

“(2) A person who furnishes fraudulent identification to a minor, or notwithstanding subsection (1) a minor who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.”

B. Elements

If the defendant is charged with purchasing, consuming, or possessing alcoholic liquor, the elements are:

- 1) Defendant was less than 21 years of age.
- 2) Defendant purchased or attempted to purchase, consumed or attempted to consume, or possessed or attempted to possess alcoholic liquor.
- 3) Defendant did not possess the alcoholic liquor for his or her personal consumption during regular working hours in the course of his or her employment by a person licensed under the Liquor Control Code, an agent of the Liquor Control Commission, or the commission itself.*
- 4) Defendant did not consume the alcoholic liquor in connection with a religious service.

*MCL
436.1703(8).
There are also
exceptions
contained in
subsections
(10) and (12) of
the statute.

If the defendant is charged with having any bodily alcohol content, the elements are:

- 1) Defendant was less than 21 years of age.
- 2) Defendant had either of the following:
 - an alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or
 - any presence of alcohol within his or her body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

C. Licensing Sanctions

No points. The conviction is reported to the Secretary of State.

For violations of MCL 436.1703(1), if the person has one prior conviction for a violation of MCL 257.624a, MCL 257.624b, MCL 436.1703, or former MCL 436.33b(1), the Secretary of State shall suspend the person's driver's license for 90 days.* A restricted license may be issued after the first 30 days of suspension. MCL 436.1703(5) and MCL 257.319(7)(a). If the person has two or more prior convictions of these offenses, a one-year suspension is mandatory. A restricted license may be issued after the first 60 days of suspension. MCL 257.319(7)(b). A "conviction" includes "a juvenile adjudication, probate court disposition, or juvenile disposition. . . ." MCL 257.8a. "Juvenile adjudication" refers to delinquency adjudications in other states. MCL 257.23a(b). "Probate court disposition" and "juvenile disposition" mean a disposition entered under MCL 712A.18. MCL 257.23b and 257.44a.

For a violation of MCL 436.1703(2), or a substantially corresponding local ordinance, the Secretary of State must suspend the person's driver's license for 90 days. MCL 257.319(3)(d).

D. Issues*

A peace officer may administer a "preliminary chemical breath analysis" or "PBT" to a minor suspected of violating MCL 436.1703, and the minor's refusal to submit to a PBT constitutes a state civil infraction. MCL 436.1703(6) states as follows:

"(6) A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may require the person to submit to a preliminary chemical breath analysis. A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis. The results of a preliminary chemical breath analysis or other

*If the offender does not have a driver's license, the Secretary of State must deny issuance of a license to the offender.

*See Section 2.3 for special notice requirements when a minor is charged with a violation of this statute.

acceptable blood alcohol test are admissible in a criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content. A minor who refuses to submit to a preliminary chemical breath test analysis as required in this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00.”

“Any bodily alcohol content” means either of the following:

“(a) An alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

“(b) Any presence of alcohol within a person’s body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.” MCL 436.1703(15)(a)–(b).

A juvenile or criminal defendant may assert as an affirmative defense that he or she legally consumed the alcohol in his or her body. MCL 436.1703(14) states as follows:

“(14) In a criminal prosecution for the violation of subsection (1) concerning a minor having any bodily alcohol content, it is an affirmative defense that the minor consumed the alcoholic liquor in a venue or location where that consumption is legal.”

For the requirements for ordering substance abuse screening and assessment, see MCL 436.1703(4).